

Application No. 09/581,412
Amendment Dated November 23, 2004
Reply to Office Action of August 26, 2004

REMARKS/ARGUMENTS

Claims 11-17, 19-36, 38-40 and 44 were pending in the application. By this Amendment, claims 11, 23, and 44 have been amended, new claims 45-46 have been added, and claim 24 has been canceled. No new matter has been added. Accordingly, claims 11-17, 19-23, 25-36, 38-40, and 44-46 are pending.

Rejection of claims 11-17, 19-36, 38-40, and 44 under 35 U.S.C. §103

The Examiner rejected claims 11-17, 19-36, 38-40, and 44 as being obvious over Jackman et al in view of Schneider et al and Aronson et al. The Examiner stated that Jackman teaches topical pharmaceutical compositions and teaches O/W emulsions. The Examiner stated that Jackman fails to teach one or more partially neutralized esters of monoglycerides and/or diglycerides of saturated fatty acids with citric acid but that Schneider teaches O/W emulsions comprising of glyceryl stearate citrate.

The Examiner stated that Jackman and Schneider fail to teach electrolyte dissolved in the aqueous phase but that Aronson teaches that the concept of achieving increased stability of an emulsion by adding electrolytes in its aqueous phase and by further incorporating conventional emulsifiers is well known in the art.

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The Examiner, therefore, stated that it would have been obvious to one of ordinary skill in the art to have modified the composition of Jackman by adding glyceryl stearate citrate as motivated by Schneider because of the expectation of successfully producing a stable topical O/W emulsion. The Examiner also stated that it would have been obvious to the skilled artisan to have further incorporated electrolytes to the aqueous phase of the emulsion as motivated by Aronson because of the expectation of successfully achieving improved stability of the emulsion.

In response, applicants have amended the independent claims which now disclose specifically an o/w emulsion rather than emulsions in general. Applicants assert that the references alone or combined would not motivate one of ordinary skill in the art to make a cosmetic or dermatological preparation comprising an o/w emulsion comprising esters of monoglycerides and/or diglycerides of saturated fatty acids with citric acid, one or more sorbitan monoesters, one or more fatty alcohols and one or more electrolytes dissolved in at least one of the one or more aqueous phases.

For example, Aronson neither teaches nor suggests of incorporation of sufficient amount of electrolyte into the aqueous phase of a specific o/w emulsion comprising esters of monoglycerides and/or diglycerides of saturated fatty acids with citric acid, one or more sorbitan monoesters, one or more fatty alcohols and one or more electrolytes dissolved in at least one of the one or more aqueous phases.

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Given all the different types of emulsions which can be formed, which can comprise many different compounds, one would not be motivated by combining these three references to specifically form an o/w emulsion which specifically comprises esters of monoglycerides and/or diglycerides of saturated fatty acids with citric acid, one or more sorbitan monoesters, one or more fatty alcohols and uses electrolytes dissolved in at least one of the one or more aqueous phases.

In addition, new claim 45 which depends on independent claim 11 and new claim 46 which depends on independent claim 23 recite that the level of the aqueous phase in said o/w emulsion is greater than 75% by volume. Support for these new claims is found in Examples 1-11 in the specification.

In column 7, first paragraph of Aronson, it mentions an o/w emulsion where the level of aqueous phase in said emulsion is less than about 24 to 25 percent by volume. Thus, new claim 45 and 46 specifically recite a level of the aqueous phase which is different than Aronson.

Applicants, therefore, respectfully request that the Examiner reconsider and withdraw this rejection.


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CONCLUSION

Based on the foregoing remarks it is believed that the claims are in condition for allowance.

Respectfully Submitted,

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